

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

EDWIN D. DENNIS, JR.,

Plaintiff,

V.

TOMMY THREAT, et.al

Defendant.

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Civil Action No. 3:05-CV-919-T

DEFENDANTS' MOTION TO STRIKE

COME NOW Tommy Threat, Corey Welch, Timothy Parquett, and Debbie Burke, Defendants in the above-styled cause, and move this Court to strike the documents submitted by the Plaintiff in response to Defendants' Special Report. In support of their Motion, the Defendants state the following:

The documents submitted by the Plaintiff as Exhibits A – C do not meet the requirements for a valid affidavit under Fed. R. Civ. P. 56 or declaration under 28 U.S.C. § 1746. Exhibit A is designated as an affidavit but does not meet the requirements of an affidavit; Exhibits B and C are designated as “statements.” Furthermore, the Plaintiff’s submissions do not comply with this Court’s Order. In its Order dated January 6, 2006, this Court stated: “[I]n filing a response to the Defendants’ report the Plaintiff should not rely only on his or her unsworn pleadings but should respond by filing sworn affidavits, or other evidentiary materials.” This Court further stated: “An affidavit is a sworn statement in writing made under oath or on affirmation *before a notary public or other authorized officer.*” (emphasis added). The exhibits do not bear the seal of a notary public or other authorized officer. Therefore, these documents are not valid affidavits. 28 U.S.C. § 1746 allows unsworn declarations to be used, “with like force and effect,” as affidavits and other sworn testimony “wherever . . . any matter is required or

permitted to be supported, evidenced, established or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit” 28 U.S.C. § 1746. To be a valid declaration under 28 U.S.C. § 1746, the declarant certifies, under penalty of perjury, that the statements contained therein are true and correct. 28 U.S.C. § 1746 (1) and (2). The exhibits are not signed subject to penalty of perjury. Therefore, they are not valid declarations under 28 U.S.C. § 1746.

Because the documents submitted by the Plaintiff are not valid either as affidavits or declarations and because the Plaintiff has failed to comply with the Order of this Court, these documents are due to be stricken from consideration if this Court treats the Defendants’ Special Report and the Plaintiff’s Response as a dispositive motion and response.

Respectfully submitted this 3rd day of March, 2006.

s/Amanda Kay Morgan

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CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd day of March, 2006, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and that I have mailed a true and correct copy of the foregoing by United States Mail, postage prepaid, to the following non-CM/ECF participant:

Edwin Dee Dennis, Jr.
AIS# 210963
Lee County Detention Center
PO Box 2407
Opelika, AL 36801

s/Amanda Kay Morgan
OF COUNSEL